



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
REGIONAL COUNSEL

February 9, 2010

Reply to
Attn Of: ORC-158

William P. Huchinson
Roberts Kaplan, LLP
601 SW Second Avenue, Ste.1800
Portland, Oregon 97204

Re: Portland Harbor Superfund Site, Portland, Oregon; Linnton Plywood Association
Settlement Offer
FRE 408 CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Mr. Hanson:

I am writing on behalf of the Environmental Cleanup Office, Environmental Protection Agency, Region 10 ("EPA") to respond to Linnton Plywood Association's settlement offer contained in your letter dated October 30, 2009. We understand the Association shut down its veneer plant in 2001 and has been in the process of liquidating its assets since that time. We also understand that, other than rental income from two tenants, the Association has no other incoming generating business, but rather the Association's expenses exceed its annual income. The property and mill plant is the only significant asset the Association owns. The Association is a cooperative corporation, meaning the shareholders are individuals that worked at the plant.

The Association requested EPA settle its potential liability for response costs under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") so that the company can dissolve and distribute proceeds from the sale of the property to its members whose earnings were used as capital operating resources. The Association too has a potential buyer for the property and it believes that settling its CERCLA liability will help facilitate the sale.

The Association represents that its CERCLA liability is de minimus and that it should not need to pay much money toward the cleanup of the Portland Harbor Superfund Site. The Association has requested EPA determine that it is a de minimus party as defined by the statute. The Association has provided EPA with information about its operations and waste handling activities since 1951 when it began operations. The Association provided a response to EPA's January 2008 Information Request. The Association also provided financial information and additional assessments of its contributions of hazardous substances in letters or memoranda dated May 29, 2009, October 2, 2009 and October 9, 2009 as well as in a couple of meetings we have had with the Association and its contractors.

Because the Association is dissolving and liquidating its assets, EPA is willing to settle early with the Association so that costs may be recovered and put towards the Portland Harbor Superfund Site. However, EPA cannot, at this point in the investigation and feasibility study phase of the cleanup, determine whether the Association is eligible as a de minimus party under Section 122(g) of CERCLA, 42 U.S.C. 9622(g), nor can we evaluate the Association's fair share of response costs for the cleanup.¹ As you know, the remedial investigation has not been completed and EPA has not made a decision regarding the remedy for the Portland Harbor Superfund Site. No comprehensive cost estimates have been developed at this time. Furthermore, EPA still is undertaking its search for potentially responsible parties.

Attachment 1 to this letter is EPA's assessment of the release or potential threat of a release of hazardous substances from the LPA facility. There is evidence that hazardous substances used, handled, and managed in the Association's operations are in the Willamette River adjacent to the facility. Based on the data and preliminary risk analysis for the Portland Harbor site, the cleanup cost just for the area off of the Association's facility could be millions of dollars. We acknowledge that other parties also contributed to the contamination off of the facility and that, based on current information and the nature of the Association's operations, its contributions were smaller than other potentially responsible parties identified to date for the Portland Harbor Superfund Site.

The Association's offer of \$100,000 is unacceptable based EPA's review of the evidence of the release of hazardous substances from the Association's operations and the estimated costs to remediate the Portland Harbor site. We acknowledge the Association's ability to pay response costs is very limited. EPA's initial assessment (with further verification and information requested herein) is that the Association can pay \$1,500,000 to settle its liability. We understand that the Association's ability to pay that amount is dependent on one of the following sources: (1) the sale of the property for \$6.5 Million, which is the offer amount from BP Products; or (2) the Association's access to insurance proceeds from most if not all of the years of coverage without a pollution exclusion clause.

EPA's agreement to accept \$1,500,000 is contingent upon: (1) approval by the U.S. Department of Justice; (2) the Association supplying the information and supporting documentation requested and any additional information EPA or the U.S. Department of Justice may require regarding the Association's financial ability to pay; and (3) no significant new information is learned about the nature of the release or potential threat of a release of hazardous substances from the LPA facility. Additionally, if in the future it is discovered that significant additional resources are available, EPA reserves the right to reevaluate the Association's ability to pay and revise its offer accordingly. Attachment 2 to this letter contains additional questions and document requests we require from the Association.

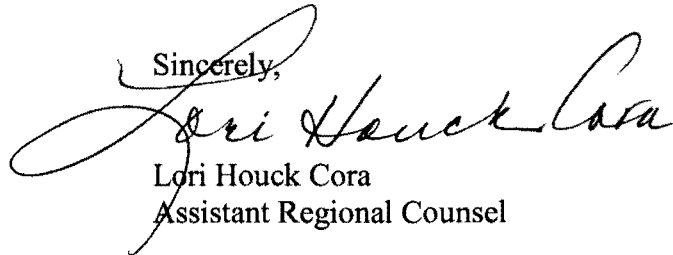
Please let us know within 30 days of your receipt of this letter whether the Association will accept EPA's counteroffer, provide the additional information requested, and proceed to negotiate the terms and conditions of a settlement. If the Association wishes to continue

¹ We note; however, that given the Association's ownership and operation of the mill it would be very difficult for it to be eligible as a de minimus landowner. See 42 U.S.C. § 9622(g)((1)(B).

negotiations, EPA will require the additional information requested in Attachment 2 no later than 45 days from your receipt of this letter.

If you want to discuss this matter, please do not hesitate to call me at (206) 553-1115 or email me at cora.lori@epa.gov. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "Lori Houck Cora". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

Lori Houck Cora
Assistant Regional Counsel

Enclosures

cc: Kristine Koch, ECL